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GOVERNMENT OF GOA

NOTE: — There is one Extraordinary issue to the Official Gazette, Series I No. 32 dated 7-11-1991 with the date 13-11-91 from pgs. 387 to 388 regarding Notification from Finance (Rev. and Cont.) Department.

GOVERNMENT OF GOA Law (Legal and Legislative Affairs) Department

Notification

10-6-90/LA

The Monopolies and Restrictive Trade Practices (Amendment) Ordinance, 1991 (Ordinance No. 8 of 1991), which has been promulgated by the President of India and published in the Gazette of India, Extraordinary, Part II, Section 1, dated 27-9-1991, is hereby published for general information of the public.

P. V. Kadnekar, Under Secretary (Drafting).

Panaji, 22nd October, 1991.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)

New Delhi, the 27th September, 1991/
Asvina 5, 1913 (Saka)

THE MONOPOLIES AND RESTRICTIVE TRADE PRACTICES (AMENDMENT) ORDINANCE, 1991

No. 8 OF 1991

Promulgated by the President in the Forty-second Year of the Republic of India.

An Ordinance further to amend the Monopolies and Restrictive Trade Practices Act, 1969 and the Companies Act, 1956.

Whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. **Short title and commencement.** — (1) This Ordinance may be called the Monopolies and Restrictive Trade Practices (Amendment) Ordinance, 1991.

(2) It shall come into force at once.

PART I

Amendments to the Monopolies and Restrictive Trade Practices Act, 1969

2. **Amendment of section 2.** — 2. In section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the principal Act),

(a) in clause (e), for sub-clause (ii), the following sub-clause shall be substituted, namely:—

“(ii) shares and stocks including issue of shares before allotment;”;

(b) clause (q) shall be omitted;

(c) in clause (r),—

(i) after the word “insurance”, the words “chit fund, real estate,” shall be inserted;

(ii) the following *Explanation* shall be inserted at the end, namely:—

Explanation. — For the removal of doubts, it is hereby declared that any dealings in real estate shall be included and shall be deemed always to have been included within the definition of “service”; .

(d) clause (w) shall be omitted.

3. **Amendment of section 10.** — In section 10 of the principal Act, in clause (b), after the words “the Central Government”, the words “or upon an application made to it by the Director General” shall be inserted.

4. **Amendment of section 11.** — In section 11 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

(1) The Commission may, before issuing any process requiring the attendance of the person against whom an inquiry (other than an inquiry upon an application by the Director General) may be made under section 10, by an order, require the Director General to make, or cause to be made, a preliminary investigation in such manner as it may direct and submit a report to the Commission to enable it to satisfy itself as to whether or not the matter requires to be inquired into.”;

(b) in sub-section (2), the words, brackets, figures and letter “sub-clause (iii) of clause (a) of” shall be omitted.

5. *Amendment of section 12.* — In section 12 of the principal Act,—

(a) in sub-section (1), after clause (e), the following clause shall be inserted, namely:—

“(f) the appearance of parties and consequence of non-appearance.”;

(b) in sub-section (2), for the words and figures “and Chapter XXXV of the Code of Criminal Procedure, 1898”, the words and figures “and Chapter XXVI of the Code of Criminal Procedure, 1973” shall be substituted. 5 of 1898. 2 of 1974.

6. *Amendment of Chapter III.* — In Chapter III of the principal Act,—

(a) Part A shall be omitted;

(b) the word and letter “Part B” occurring before section 27 shall be omitted.

7. *Amendment of section 27.* — In section 27 of the principal Act, in sub-section (1), for the portion beginning with the words “Notwithstanding anything” and ending with the words “for an inquiry”, the following shall be substituted, namely:—

“Notwithstanding anything contained in this Act or in any other law for the time being in force, the Commission may,—

(i) upon receiving a complaint of facts from any trade association or from any consumer or a registered consumers' association, whether such consumer is a member of that consumers' association or not, or

(ii) upon a reference made to it by the Central Government or a State Government, or

(iii) upon its own knowledge or information, if it is of opinion that the working of an undertaking is prejudicial to the public interest, or has led, or is leading, or is likely to lead, to the adoption of any monopolistic or restrictive trade practices,

inquire into”.

8. *Amendment of section 27A.* — In section 27A of the principal Act, in sub-section (1), for the portion beginning with the words “Notwithstanding anything” and ending with the words “for an inquiry”, the following shall be substituted, namely:—

“Notwithstanding anything contained in this Act or in any other law for the time being in force, the Commission may,—

(i) upon receiving a complaint of facts from any trade association or from any consumer or a registered consumers' association, whether such consumer is a member of that consumers' association or not, or

(ii) upon a reference made to it by the Central Government or a State Government, or

(iii) upon its own knowledge or information,

if it is of opinion that the continuance of interconnection of an undertaking (hereinafter in

this section referred to as the principal undertaking) with any other undertaking is detrimental to—

(a) the interests of the principal undertaking; or

(b) the future development of the principal undertaking; or

(c) the steady growth of the industry to which the principal undertaking pertains; or

(d) the public interest,
inquire into”.

9. *Amendment of Chapter III.* — Part C of Chapter III of the principal Act shall be omitted.

10. *Omission of Chapter III-A.* — Chapter III-A of the principal Act shall be omitted.

11. *Amendment of section 31.* — In section 31 of the principal Act, in sub-section (1), in the proviso, after the words “Commission receives”, the words “any application from the Director General or” and after the words “it may”, the words “on such application or” shall be inserted.

12. *Amendment of section 36A.* — In section 36A of the principal Act,—

(a) for the portion beginning with the words “adopts one or more” and ending with the words “or otherwise”, the following shall be substituted, namely:—

“adopts any unfair method or unfair or deceptive practice including any of the following practices”;

(b) in clause (1), in sub-clause (i), after the word “quality”, the word “quantity”, shall be inserted.

13. *Substitution of new section for section 36C.* — For section 36C of the principal Act, the following section shall be substituted, namely:—

“36C. Investigation by Director General before an issue of process in certain cases. — The Commission may, before issuing any process requiring the attendance of the person against whom an inquiry (other than an inquiry upon an application by the Director General) may be made under section 36B, by an order, require the Director General to make, or cause to be made, a preliminary investigation in such manner as it may direct and submit a report to the Commission, for the purpose of satisfying itself that the matter requires to be inquired into.”.

14. *Amendment of section 36D.* — In section 36D of the principal Act, in sub-section (1),—

(a) in clause (a), the word “and” occurring at the end shall be omitted;

(b) after clause (b), the following clause shall be inserted, namely:—

“(c) any information, statement or advertisement relating to such unfair trade practice shall be disclosed, issued or published, as the case may be, in such manner as may be specified in the order.”.

15. *Omission of section 45.*—Section 45 of the principal Act shall be omitted.

16. *Amendment of section 46.*—In section 46 of the principal Act, the words and figures "section 22 or section 23 or section 24 or" shall be omitted.

17. *Omission of section 47.*—Section 47 of the principal Act shall be omitted.

18. *Amendment of section 48.*—In section 48 of the principal Act, sub-section (2) shall be omitted.

19. *Substitution of new section for section 48B.*—For section 48B of the principal Act, the following section shall be substituted, namely:—

"48B Penalty for contravention of section 27B."

(1) Every person who exercises any voting right, in respect of any share in contravention of any order of the Central Government referred to in sub-section (1) of section 27B shall be punishable with imprisonment for a term which may extend to five years, and shall also be liable to fine.

(2) If any company gives effect to any voting or other right exercised in relation to any share held in contravention of an order of the Central Government referred to in sub-section (1) of section 27B, the company shall be punishable with fine which may extend to five thousand rupees, and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.".

20. *Amendment of section 48C.*—In section 48C of the principal Act, for the words "which may extend to three years, or with fine which may extend to ten thousand rupees, or with both", the following shall be substituted, namely:—

"which shall not be less than six months but which may extend to three years and with fine which may extend to ten lakh rupees:

Provided that the court may, for reasons to be recorded in writing, impose a sentence of imprisonment for a term lesser than the minimum term specified in this section.".

21. *Amendment of section 50.*—In section 50 of the principal Act, for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—

(1) A person, who is deemed under section 13 to be guilty of an offence under this Act, shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to fifty thousand rupees, or with both, and where the offence is a continuing one, with a further fine which may extend to five thousand rupees for every day, after the first, during which such contravention continues.

(2) If any person contravenes, without any reasonable excuse, any order made by the Central Government under section 31 or any order made by the Commission under section 37, he shall be pu-

nishable with imprisonment for a term which shall not be less than,—

(a) in the case of the first offence, six months but not more than three years, and

(b) in the case of any second or subsequent offence in relation to the goods or services in respect of which the first offence was committed, two years but not more than seven years, and, in either case, where the contravention is a continuing one, also with fine which may extend to five thousand rupees for every day, after the first, during which such contravention continues:

Provided that the court may, for reasons to be recorded in writing, impose a sentence of imprisonment for a term lesser than the minimum term specified in this sub-section".

22. *Insertion of new section 53A.*—After section 53 of the principal Act, the following section shall be inserted, namely:—

"53A. Power to compound offences.—The Commission may, for reasons to be recorded in writing, either before or after the institution of proceedings, compound any offence under section 48C or section 50 relating to contravention of any order made by it."

23. *Amendment of section 54.*—In section 54 of the principal Act,—

(a) sub-section (2) shall be omitted;

(b) in sub-section (3), the words, brackets and figure "or any term of a scheme of finance, as modified under sub-section (2)," shall be omitted.

24. *Amendment of section 55.*—In section 55 of the principal Act, after the words "the Commission under", the words, figures and letter "section 12A or" shall be inserted.

25. *Amendment of section 67.*—In section 67 of the principal Act, in sub-section (2), clauses (ac), (ba) and (g) shall be omitted.

26. *Omission of the Schedule.*—The Schedule to the principal Act shall be omitted.

PART II

Amendments of the Companies Act, 1956

27. *Insertion of new sections 108A to 108-I.*—In the Companies Act, 1956 (hereinafter referred to as the Companies Act), after section 108, the following sections shall be inserted, namely:—

"108A. Restriction on acquisition of certain shares.—(1) Except with the previous approval of the Central Government, no individual, firm, group, constituent of a group, body corporate or bodies corporate under the same management, shall jointly or severally acquire or agree to acquire, whether in his or its own name or in the name of any other person, any equity shares in a public company, or a private company which is a subsidiary of a public company, if the total nominal

value of the equity shares intended to be so acquired exceeds, or would, together with the total nominal value of any equity shares already held in the company by such individual, firm, group, constituent of a group, body corporate or bodies corporate under the same management, exceed twenty-five per cent. of the paid-up equity share capital of such company.

(2) Where any individual, firm, group, constituent of a group, body corporate or bodies corporate under the same management (hereinafter in this Act referred to as the acquirer), is prohibited, by sub-section (1), from acquiring or agreeing to acquire except with the previous approval of the Central Government, any share of a public company or a private company which is a subsidiary of a public company, no—

(a) company in which not less than fifty-one per cent. of the share capital is held by the Central Government; or

(b) corporation (not being a company) established by or under any Central Act; or

(c) financial institution,

shall transfer or agree to transfer any share to such acquirer unless such acquirer has obtained the previous approval of the Central Government for the acquisition, or agreement for the acquisition, of such share.

108B. Restriction on transfer of shares.—(1) Every body corporate, or bodies corporate under the same management, holding, whether singly or in the aggregate, ten per cent. or more of the nominal value of the subscribed equity share capital of any other company, shall, before transferring one or more of such shares, give to the Central Government an intimation of its or their proposal to transfer such share, and every such intimation shall include a statement as to the particulars of the share proposed to be transferred, the name and address of the person to whom the share is proposed to be transferred, the share holding, if any, of the proposed transferee in the concerned company and such other particulars as may be prescribed.

(2) Where, on receipt of an intimation given under sub-section (1) or otherwise, the Central Government is satisfied that as a result of such transfer, a change in the composition of the Board of directors of the company is likely to take place and that such change would be prejudicial to the interests of the company or to the public interest, it may, by order, direct that—

(a) no such share shall be transferred to the proposed transferee;

Provided that no such order shall preclude the body corporate or bodies corporate from intimating, in accordance with the provisions of sub-section (1), to the Central Government its or their proposal to transfer the share to any other person, or

(b) where such share is held in a company engaged in any industry specified in Schedule

XV, such share shall be transferred to the Central Government or to such corporation owned or controlled by that Government as may be specified in the direction.

(3) Where a direction is made by the Central Government under clause (b) of sub-section (2), the share referred to in such direction shall stand transferred to the Central Government or to the corporation specified therein, and the Central Government or the specified corporation, as the case may be, shall pay, in cash, to the body corporate or bodies corporate from which such share stands transferred, an amount equal to the market value of such share, within the time specified in sub-section (4).

Explanation.—In this sub-section, “market value” means, in the case of a share which is quoted on any recognised stock exchange, the value quoted at such stock exchange on the date immediately preceding the date on which the direction is made, and, in any other case, such value as may be mutually agreed upon between the holder of the share and the Central Government or the specified corporation, as the case may be, or in the absence of such agreement, as may be determined by the court.

(4) The market value referred to in sub-section (3) shall be given forthwith, where there is no dispute as to such value or where such value has been mutually agreed upon, but where there is a dispute as to the market value, such value as is estimated by the Central Government or the corporation, as the case may be, shall be given forthwith and the balance, if any, shall be given within thirty days from the date when the market value is determined by the court.

(5) If the Central Government does not make any direction under sub-section (2) within sixty days from the date of receipt by it of the intimation given under sub-section (1), the provisions contained in sub-section (2) with regard to the transfer of such share shall not apply.

108C. Restriction on the transfer of shares of foreign companies.—No body corporate, or bodies corporate under the same management, which holds, or hold in the aggregate, ten per cent. or more of the nominal value of the equity share capital of a foreign company, having an established place of business in India, shall transfer any share in such foreign company to any citizen of India or any body corporate incorporated in India except with the previous approval of the Central Government and such previous approval shall not be refused unless the Central Government is of opinion that such transfer would be prejudicial to the public interest.

108D. Power of Central Government to direct companies not to give effect to the transfer.—(1) Where the Central Government is satisfied that as a result of the transfer of any share or block of shares of a company, a change in the controlling interest of the company is likely to take place and that such change would be prejudicial to the interests of the company or to the public interest, that

Government may direct the company not to give effect to the transfer of any such share or block of shares and—

(a) where the transfer of such share or block of shares has already been registered, not to permit the transferee or any nominee or proxy of the transferee, to exercise any voting or other rights attaching to such share or block of shares; and

(b) where the transfer of such share or block of shares has not been registered, not to permit any nominee or proxy of the transferor to exercise any voting or other rights attaching to such share or block of shares.

(2) Where any direction is given by the Central Government under sub-section (1), the share or the block of shares referred to therein shall stand retransferred to the person from whom it was acquired, and thereupon the amount paid by the transferee for the acquisition of such share or block of shares shall be refunded to him by the person to whom such share or block of shares stands or stand retransferred.

(3) If the refund referred to in sub-section (2) is not made within the period of thirty days from the date of the direction referred to in sub-section (1), the Central Government shall, on the application of the person entitled to get the refund, direct, by order, the refund of such amount and such order may be enforced as if it were a decree made by a civil court.

(4) The person to whom any share or block of shares stands or stand retransferred under sub-section (2) shall, on making refund under sub-section (2) or sub-section (3), be eligible to exercise voting or other rights attaching to such share or block of shares.

108E. Time within which refusal to be communicated.—Every request made to the Central Government for according its approval to the proposal for the acquisition of any share referred to in section 108A or the transfer of any share referred to in section 108C shall be presumed to have been granted unless, within a period of sixty days from the date of receipt of such request, the Central Government communicates to the person by whom the request was made, that the approval prayed for cannot be granted.

108F. Nothing in sections 108A to 108D to apply to Government companies, etc.—Nothing contained in section 108A [except sub-section (2) thereof] shall apply to the transfer of any share to, and nothing in section 108B or section 108C or section 108D shall apply to the transfer of any share by—

(a) any company in which not less than fifty-one percent. of the share capital is held by the Central Government;

(b) any corporation (not being a company) established by or under any Central Act;

(c) any financial institution.

108G. Applicability of the provisions of sections 108A to 108F.—The provisions of sections 108A to 108F (both inclusive) shall apply to the acqui-

sition or transfer of shares or share capital by, or to, an individual, firm, group, constituent of a group, body corporate, or bodies corporate under the same management, who or which—

(a) is the owner in relation to a dominant undertaking, or

(b) would be, as a result of such acquisition or transfer of shares or share capital, the owner of a dominant undertaking.

108H. Construction of certain expressions used in sections 108A to 108G.—

The expressions, "group", "same management", "financial institution", "dominant undertaking" and "owner" used in sections 108A to 108G (both inclusive), shall have the meanings respectively assigned to them in the Monopolies and Restrictive Trade Practices Act, 1969.

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108-I. Penalty for acquisition or transfer of share in contravention of sections 108A to 108D.—

(1) Any person who acquires any share in contravention of the provisions of section 108A shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

(2) (a) Every body corporate which makes any transfer of shares without giving any intimation as required by section 108B, shall be punishable with fine which may extend to five thousand rupees.

(b) Where any contravention of the provisions of section 108B has been made by a company, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

(3) (a) Every body corporate which makes any transfer of shares in contravention of the provisions of section 108C, shall be punishable with fine which may extend to five thousand rupees.

(b) Where any contravention of the provisions of section 108C has been made by a company, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

(4) (a) Every person who transfers any share in contravention of any order made by the Central Government under section 108, or gives effect to any transfer of shares made in contravention of any direction made by the Central Government under section 108D, or who exercises any voting right in respect of any share in contravention of any direction made by the Central Government under section 108D, shall be punishable with imprisonment for a term which may extend to five years, and shall also be liable to fine.

(b) If any company gives effect to any voting or other right exercised in relation to any share acquired in contravention of the provisions of section 108B, or which gives effect to any voting right in contravention of any direction made by the Central Government under section 108D, the company

shall be punishable with fine which may extend to five thousand rupees, and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.”.

28. Insertion of new Schedule.— After Schedule XIV to the Companies Act, the following Schedule shall be inserted, namely:—

“SCHEDULE XV

[See section 108B (2) (b)]

1. Arms and ammunition and allied items of defence equipment, defence aircrafts and warships.
2. Atomic energy.
3. Coal and lignite.

4. Mineral oils.

5. Mining of iron, manganese ore, chrome ore, gypsum, sulphur, gold and diamond.

6. Mining of copper, lead, zinc, tin, molybdenum and wolfram.

7. Minerals specified in the Schedule to the Atomic Energy (Control of Production and Use) Order, 1953.

8. Railway transport.”.

R. VENKATARAMAN,

President.

K. L. MOHANPURIA,

Additional Secretary to the Govt. of India.